

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

Z-TEL COMMUNICATIONS, INC.	}	
	}	
Complainant	}	
	}	
vs.	}	Docket No. 02-0160
	}	
ILLINOIS BELL TELEPHONE COMPANY, d/b/a AMERITECH ILLINOIS	}	
	}	
Respondent	}	

RESPONSE OF ILLINOIS BELL TELEPHONE COMPANY  
TO Z-TEL'S EXPEDITED MOTION FOR LEAVE TO FILE ITS  
FIRST AMENDED COMPLAINT AND TO BIFURCATE  
THE HEARINGS IN THIS MATTER

Illinois Bell Telephone Company (Ameritech Illinois), by its attorneys, files this response to the Motion filed by Z-Tel on March 15, 2002, requesting leave to file a First Amended Complaint and to bifurcate the hearings in this matter. For the reasons stated below, Z-Tel's motion to file an amended complaint should be denied in part, and its motion to bifurcate the hearings should be denied in its entirety.

A. The Motion to File the First Amended Complaint Should be Denied in Part.

1. Z-Tel seeks to file an amended complaint in three counts. Count I is a repeat of the existing Count I. It is filed pursuant to Section 13-515 of the Act and alleges violations of Section 13-514 of the Act. Ameritech Illinois has no objection to this Count being re-filed since it is identical to the initial Count I.

2. Count II is a re-filing of the original Count II and seeks to cure defects in the original Count II, as pointed out in Ameritech Illinois' motion to dismiss Count II. Count II is a straight breach of contract action alleging that Ameritech Illinois breached its Interconnection Agreement with Z-Tel. Without waiving any of its defenses to the revised Count II, Ameritech Illinois does not object to the filing of Count II since it seeks to respond to Ameritech Illinois' motion to dismiss the original Count II.

3. Count III seeks to allege an entirely new cause of action for violation of numerous provisions of the Public Utilities Act (9-241, 9-250, 9-251, 9-252, 9-252.1, 9-253, 10-101, 10-108, 13-514, 13-801). Z-Tel's motion should be denied as to Count III. Z-Tel's motion to file this entirely new cause of action was filed fifteen days after Z-Tel agreed to the schedule in this proceeding at a pre-hearing conference on February 28, 2001, and three days after it filed its direct testimony. The motion was filed two business days before Ameritech Illinois' rebuttal testimony was due and six business days before the hearing in this matter is statutorily required to commence. Under any view of the facts, Z-Tel's motion to bring in an entirely new cause of action at this late date is untimely, prejudicial to the defendant, and should be denied.

4. Z-Tel cites the provisions of Section 5/2-616 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-616, for the proposition that the right to amend is very broad. While that may be true, it is equally clear that the right to amend is not absolute and unlimited. *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 467, 605 N.E. 2d 493 (1992). Whether amendment should be allowed lies within

the sound discretion of the trial court (in this instance, the Administrative Law Judge). *Bidani v. Lewis*, 285 Ill. App. 3d 545, 554, 675 N. E. 2d 647 (1<sup>st</sup> Dist. 1996). Given the untimeliness of complainant's motion and the clear prejudice to respondent, the motion to file a new Count III should be denied.

B. The Motion to Bifurcate the Proceedings Should be Denied in its Entirety.

5. Bifurcating the hearings on Counts I and II (and Count III if Z-Tel were granted permission to file it) would be highly prejudicial to the respondent and would violate fundamental tenets of due process. Counts I, II and III all contain the identical factual allegations and request the identical relief. Consequently, there can be no prejudice to Z-Tel from trying these counts together since, presumably, Z-Tel's evidence would be the same for all three counts. Bifurcating the hearings, on the other hand, would be highly prejudicial to Ameritech Illinois because it would, in effect, permit Z-Tel to try the same case twice. In the event that Z-Tel did not get the result it sought in the first hearing, it could try again in a second hearing. Z-Tel is not entitled to two bites at the same apple.

6. Z-Tel's motion argues that the amended complaint will "narrow the issues that are brought under Section 13-514." (p. 1 & p. 3, par. 6). Not so. Count I of the amended complaint contains all of the same allegations and requests all of the same relief as Count I of the original complaint, and the factual allegations and requests for relief in Counts II and III are identical. There is no narrowing of the issues.

7. Z-Tel argues (p. 5, par. 10), “it is administratively more efficient to address only those issues contained in Count I for the First Amended Complaint in the initial phase of this complaint process.” The truth is exactly the opposite. Since Counts I, II and III allege the exact same facts and seek the exact same relief, it is administratively more efficient to try them in a single hearing. It would be administratively wasteful, as well as unfair to the respondent, to conduct two separate hearings on the same facts.

WHEREFORE, Ameritech Illinois respectfully requests that Z-Tel's motion to file an amended complaint be denied with respect to Count III of the proposed amended complaint and that Z-Tel's motion to bifurcate the proceedings be denied in its entirety (whether or not Z-Tel is permitted to file a new Count III).

Respectfully submitted,

Illinois Bell Telephone Company  
(Ameritech Illinois)

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### Certificate of Service

The undersigned, an attorney, certifies that the foregoing Response to Z-Tel's Expedited Motion for Leave to File First Amended Complaint and to Bifurcate the Hearings in this Matter was filed with Donna Caton, Chief Clerk of the Illinois Commerce Commission, by E-Docket and copies were served on each person on the attached Service List by electronic mail before 4:00 p.m. or by U.S. mail on March 20, 2002.

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